

**REMARKS/ARGUMENTS**

Claims 124-126 and 128-130 were pending and were examined. All claims were rejected over the art. The claims have been amended and canceled as noted above.

Reexamination and reconsideration of the claims, as amended, are respectfully requested.

Before considering the claim rejections in detail, Applicants would like to discuss the teachings of the Ward '007 patent which is relied on as the primary reference in all rejections. In particular, the Examiner relies on Ward as teaching a sound conduction tube 60 having a first concentric seal 70 and a second concentric seal 82, as shown in Fig. 6. Applicants respectfully disagree with this characterization. While Ward '007 does teach a hearing conduction tube 60 having a first or distal seal 70, the structure 82 is in fact a second tube intended to support the conduction tube 60, and is in no way a seal. Indeed, the second tube 82 is described as a "hollow tube external to and generally coaxial with the acoustic conduction tube 60." Col. 6, lines 41-43. It is further stated that the "space between the two tubes 60 and 82 forms a sound conduction passageway 85 . . . [which] . . . should be open at one end to the aperture 20 to receive unamplified sound and open at the other end to the wall of the ear canal adjacent the top [seal] . . . to allow bone-conducted sounds to reach the ear canal." For these reasons, Applicants believe that the Examiner's reliance on the support tube 82 as meeting the second seal requirement of the claims in the present application to be misplaced.

Independent claim 130 has been rejected as being anticipated by the Ward '007 patent. Such rejection is traversed in part and overcome in part.

Claim 130 requires that the sound conduction tube structure have both a "means . . . for delivering received sounds to an acoustically sealed space about the eardrum" and "means . . . for concurrently directing occlusion sounds away from the eardrum when worn by the user."

As discussed above, while Ward may disclose a first component or means 70 for delivering sounds to an acoustically sealed space about the eardrum, Ward in no way teaches or suggests the second means for sealing in the ear canal concurrently directing occlusion sounds away from the eardrum. Indeed, the putative second "seal 82" of Ward is specifically taught to

prevent "the occlusion effect . . . by venting bone-conducted low frequency sounds out of the ear canal." For these reasons, Applicants believe that the teachings of Ward '007 fall far short of anticipating claim 130 herein.

In an effort to expedite prosecution of the application, however, Applicants have amended claim 130 to further clarify that the other appendage seals in the ear canal and the tube is intended for connection with a main module of a hearing device which is partially inserted into an ear canal. Ward '007, in contrast, teaches a hearing conduction tube which is intended only for connection to an external hearing device.

Independent claim 104 has been rejected as being obvious over the combination of Ward '007 in view of the Fretz '608 patent. Such rejections are traversed in part and overcome in part.

Claim 104 clearly requires a tubular insert having a sound conduction tube with both a first concentric seal and a second concentric seal which is either on the tube or on an associated receiver section of the hearing device. For the reasons discussed above, such a structure is contraindicated by Ward '007. Ward specifically teaches that the second structure which is placed around the sound conduction tube must not provide a seal and which instead must transmit sound therethrough without substantial inhibition.

Nor does the Fretz '608 patent cure these deficiencies. While the sound conduction tube 12 of Fretz '608 may arguably comprise a distal seal, e.g., in the form of tip 14, there is no structure which could even arguably be said to be a second concentric seal on the tube or the receiver section. Moreover, in an effort to further distinguish the teachings of Fretz, Applicants have amended claim 104 to clarify that the other appendage seals in the ear canal and that the receiver section is part of a main module which is at least partially inserted into the ear canal. Thus, the conduction tube 12 of Fretz, which is intended to extend outward to an external module, would not be equivalent.

For these reasons, it is believed that independent claim 104 as well as all claims dependent thereon are in condition for allowance.

In rejecting independent claim 128, the Examiner relies on Ward as teaching a sound conduction tube having "at least one appendage 70" and "another appendage 82" as

illustrated in Figs. 6 and 7. For the reasons discussed above, Applicants respectfully disagree with this characterization. While the tip 70 might arguably be considered the "at least one appendage" of claim 128, the second tube 82 cannot be considered an appendage which directs "occlusion sounds away from the tympanic membrane when said tubular insert is connected to said sound receiver module and worn in the ear canal." As specifically taught in the Ward '007 patent, the second tube 82 is intended to allow sounds to pass through the ear canal toward the tympanic membrane.

In an effort to even further distinguish the teachings of Ward '007 when combined with Fretz, independent claim 128 has been amended to clarify that the receiver module is at least partially inserted into the ear canal, contrary to the teachings of Fretz.

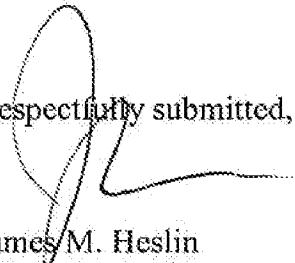
Finally, Applicants note that independent claim 129, the only other independent claim, has now been canceled without prejudice to refiling in a subsequent application.

### CONCLUSION

In view of the above amendments and remarks, Applicants believe that all remaining claims, as amended, are now in condition for allowance and request that the application be passed to issue at an early date.

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
JMH:jis/jke  
61069096 v1